Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2008–0126]

RIN 0579–AC93

Importation of Hass Avocados From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of Hass avocados from Peru into the continental United States. As a condition of entry, Hass avocados from Peru would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas or trapping for fruit flies; surveys for the avocado seed moth; and inspection for quarantine pests by the national plant protection organization of Peru. Hass avocados from Peru would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados were grown, packed, and inspected and found to be free of pests in accordance with the proposed requirements. This action would allow for the importation of Hass avocados from Peru into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before March 9, 2009.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0126* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0126, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0126.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Assistant Branch Chief, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–48, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Peru has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow Hass avocados from Peru to be imported into the United States.

As part of our evaluation of Peru's request, we prepared a draft pest risk assessment (PRA), titled ''Importation of 'Hass' Avocado (*Persea americana*) Fruit from Peru into the Continental United States'' (May 2006). The draft PRA evaluated the risks associated with the importation of Hass avocados into the continental United States (the lower 48 States and Alaska) from Peru.

We published a notice [1] in the **Federal Register** on May 25, 2006 (71 FR 30113, Docket No. APHIS–2006–0072) in which we advised the public of the availability of the draft PRA and solicited comments on it for 60 days ending July 24, 2006. We received seven comments by that date, from exporters, importers, members of Congress, a domestic avocado industry association, researchers, and the NPPO of Peru.

We made changes to the May 2006 PRA in response to public comments and peer review comments. The changes we made are summarized in an appendix to the revised PRA. APHIS will accept comments on the revised PRA throughout the comment period for this proposed rule. Copies of the revised PRA, titled ''Importation of 'Hass' Avocado (*Persea americana*) Fruit from Peru into the Continental United States'' (October 2008), may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The revised PRA identifies six pests of quarantine significance present in Peru that could be introduced into the United States through the importation of Hass avocados:

• *Anastrepha fraterculus* (Wiedemann), the South American fruit fly;

• *Anastrepha striata* Schiner, the guava fruit fly;

• *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly (Medfly);

• *Coccus viridis* (Green), the green scale;

• *Ferrisia malvastra* (McDaniel), a mealybug; and

• *Stenoma catenifer* Walsingham, the avocado seed moth.

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD). Copies of the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the

[1] To view the notice, the draft PRA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0072.*

Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the recommendations of the RMD, we are proposing to allow the importation of Hass avocados from Peru into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would require:

- Registration, monitoring, and oversight of places of production;
- Grove sanitation;
- Pest-free areas or trapping for *A. fraterculus, A. striata,* and Medfly;
- Surveys for the avocado seed moth;
- Harvesting requirements for safeguarding and identification of the fruit;
- Packinghouse requirements for safeguarding and identification of the fruit; and
- Inspection by the NPPO of Peru for the quarantine pests.

Hass avocados from Peru would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados were grown, packed, and inspected and found to be free of pests in accordance with the proposed requirements.

We are proposing to add the systems approach to the regulations in a new § 319.56–49 governing the importation of Hass avocados from Peru into the United States. The mitigation measures in the proposed systems approach are discussed in greater detail below.

Proposed Systems Approach

General Requirements

Paragraph (a) of § 319.56–49 would set out general requirements for the NPPO of Peru and for growers and packers producing avocados for export to the United States.

Paragraph (a)(1) would require the NPPO of Peru to provide a workplan to APHIS that details the activities that the NPPO of Peru will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–49. As described in a notice we published on May 10, 2006, in the **Federal Register** (71 FR 27221–27224, Docket No. APHIS–2005–0085), a bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Bilateral workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires a bilateral workplan to be developed.

Paragraph (a)(1) would also state that the NPPO of Peru must establish a trust fund in accordance with § 319.56–6. Section 319.56–6 of the regulations sets forth provisions for establishing trust fund agreements to cover costs incurred by APHIS when APHIS personnel must be physically present in an exporting country or region to facilitate exports. The systems approach may require APHIS personnel to monitor treatments if they are conducted in Peru.

Paragraph (a)(2) would require the avocados to be grown at places of production that are registered with the NPPO of Peru and that meet the requirements for grove sanitation, pest-free areas or trapping for *A. fraterculus, A. striata,* and Medfly, and surveys for the avocado seed moth that are described later in this document.

Paragraph (a)(3) would require the avocados to be packed for export to the United States in packinghouses that are registered with the NPPO of Peru and that meet the packinghouse requirements for fruit origin, pest exclusion, cleaning, safeguarding, and identification that are described later in this document.

Paragraph (a)(4) would state that avocados from Peru may be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Commercially produced avocados are cleaned as part of the packing process. This practice would help to mitigate the risk associated with *C. viridis* and *F. malvastra.* Both of these pests are external pests that would be dislodged by cleaning. In addition, the industry practice of culling damaged fruit would help to ensure that avocados exported from Peru are free of quarantine pests in general.

Monitoring and Oversight

The systems approach we are proposing includes monitoring and oversight requirements in paragraph (b) of proposed § 319.56–49 to ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing of avocados for export to the United States.

Paragraph (b)(1) would require the NPPO of Peru to visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements for grove sanitation and surveys for the avocado seed moth that are discussed later in this document and follow pest control guidelines, when necessary, to reduce quarantine pest populations. The systems approach provides for the establishment of areas that are free of the three fruit flies or the use of trapping for those fruit flies; if trapping is conducted, the NPPO of Peru would also have to verify that the growers are complying with the trapping requirements and would have to certify that each place of production has effective fruit fly trapping programs. Any personnel conducting trapping and pest surveys would have to be trained and supervised by the NPPO of Peru. APHIS would monitor the places of production if necessary.

Under paragraph (b)(2), in addition to conducting fruit inspections at the packinghouses, the NPPO of Peru would be required to monitor packinghouse operations to verify that the packinghouses are complying with the packinghouse requirements for fruit origin, pest exclusion, cleaning, safeguarding, and identification that are described later in this document.

Under paragraph (b)(3), if the NPPO of Peru finds that a place of production or a packinghouse is not complying with the proposed regulations, no fruit from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO of Peru conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (b)(4) would require the NPPO of Peru to retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review. Such forms and documents would include (but would not necessarily be limited to)

fruit fly trapping records, avocado seed moth survey records, inspection records, and treatment records.

Grove Sanitation

Under paragraph (c) of proposed § 319.56–49, avocado fruit that has fallen from the trees would have to be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. This procedure would reduce the amount of material in the groves that could serve as potential host material for insect pests.

Fruit that has fallen from avocado trees to the ground may be damaged and thus more susceptible to infestation. Therefore, proposed paragraph (c) would not allow fallen avocado fruit to be included in field containers of fruit brought to the packinghouse to be packed for export.

Mitigation Measures for A. fraterculus and A. striata

Paragraph (d) of proposed § 319.56–49 would provide two options for mitigating the risk associated with *A. fraterculus* and *A. striata* in avocados from Peru: Establishment of an area free of *A. fraterculus* and *A. striata* or trapping to demonstrate that places of production have a low prevalence of *A. fraterculus* and *A. striata*.

Peru currently does not have any areas that APHIS considers to be free of *A. fraterculus* and *A. striata*. However, the NPPO of Peru has indicated its intention to establish areas within Peru that are free of *A. fraterculus* and *A. striata* in the future.

Section 319.56–5 sets out specific requirements for determination that an area is a pest-free area. Paragraph (a) of § 319.56–5 states that determinations of pest-free areas be made in accordance with International Standards for Phytosanitary Measures (ISPM) No. 4, which is incorporated by reference in § 300.5. ISPM No. 4 sets out three main criteria for recognition of a pest-free area:

- Systems to establish freedom;
- Phytosanitary measures to maintain freedom; and
- Checks to verify freedom has been maintained.

Paragraph (b) of § 319.56–5 requires that APHIS approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be taken upon detection of a pest. It also indicates that pest-free areas are subject to audit by APHIS to verify their status.

If avocados were produced in an area designated by APHIS as free of *A. fraterculus* and *A. striata* in accordance with § 319.56–5, no further mitigations for those fruit flies would be necessary for fruit produced in that area. Therefore, proposed paragraph (d)(1) would provide as an option for mitigating *A. fraterculus* and *A. striata* that the avocados are produced in a place of production located in an area that is designated as free of *A. fraterculus* and *A. striata* in accordance with § 319.56–5.

If we were to determine that an area in Peru is free of *A. fraterculus* and *A. striata*, the general requirements for fruits and vegetables imported from pest-free areas in paragraph (e) of § 319.56–5 would be addressed in other parts of the proposed systems approach in § 319.56–49. Specifically:

- The traceability requirements in paragraph (h)(5) of proposed § 319.56–49 fulfill the requirements in paragraph (e)(1) of § 319.56–5;
- The phytosanitary certification requirement in paragraph (j) of proposed § 319.56–49 fulfills the certification requirement in paragraph (e)(2) of § 319.56–5; and
- The safeguarding requirements in paragraphs (g) and (h)(4) of proposed § 319.56–49 fulfill the safeguarding requirement in paragraph (e)(3) of § 319.56–5. These requirements are discussed in greater detail later in this document.

Paragraph (d)(2) of proposed § 319.56–49 would provide for the use of trapping to demonstrate that registered places of production have a low prevalence of *A. fraterculus* and *A. striata*. Although the PRA has determined that *A. fraterculus* and *A. striata* are both potentially pests of Hass avocados from Peru, Hass avocados are known to be poor hosts for *Anastrepha* spp. fruit flies in general. However, the risk that these fruit flies will infest Hass avocados increases if their population is high in areas where avocados are produced. Trapping to demonstrate an area of low pest prevalence would therefore be an appropriate mitigation for these two fruit flies.

Beginning at least 1 year before harvest begins and continuing through the end of the harvest, trapping would have to be conducted in registered places of production with at least 1 trap per 0.2 square kilometers (km^2) to demonstrate that the places of production have a low prevalence of *A. fraterculus* and *A. striata*. APHIS-approved traps baited with APHIS-approved plugs would have to be used and serviced at least once every 2 weeks.

During the trapping, when traps are serviced, if *A. fraterculus* and *A. striata* are trapped at a particular place of production at cumulative levels above 0.7 flies per trap per day, pesticide bait treatments would have to be applied in the affected place of production in order for the place of production to remain eligible to export avocados to the United States. The NPPO of Peru would have to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

Mitigation Measures for Medfly

Paragraph (e) of proposed § 319.56–48 would provide three options for mitigating the risk associated with Medfly in avocados from Peru: Establishment of an area free of Medfly, trapping to demonstrate that places of production are free of Medfly, or treatment.

Similar to proposed paragraph (d)(1), proposed paragraph (e)(1) would provide as an option for Medfly that the avocados are produced in a place of production located in an area that is designated as free of Medfly in accordance with § 319.56–5. Peru currently does not have any areas that APHIS considers to be free of Medfly. However, the NPPO of Peru has indicated its intention to establish areas within Peru that are free of Medfly in the future.

Hass avocados are a better host for Medfly than they are for *A. fraterculus* and *A. striata*. For that reason, paragraph (e)(2) of proposed § 319.56–49 would provide for the use of trapping to demonstrate that registered places of production are free of Medfly.

Beginning at least 1 year before harvest begins and continuing through the end of the harvest, trapping would have to be conducted in registered places of production to demonstrate that the places of production are free of Medfly. There would have to be at least 2 traps per km^2 in commercial production areas. APHIS-approved traps baited with APHIS-approved plugs would have to be used and serviced at least once every 2 weeks.

During the trapping, when traps are serviced, if any Medfly are found, 10 additional traps would have to be deployed in a 0.5-km^2 area immediately surrounding all traps where Medfly was found to determine whether a reproducing population is established. If any additional Medfly are found within 30 days of the first detection, the affected place of production would be ineligible to export avocados without treatment for Medfly until the source of the infestation is identified and the infestation is eradicated. APHIS would have to concur with the determination

that the infestation has been eradicated. The NPPO of Peru would have to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

If the avocados were not produced in an area free of Medfly or in a place of production free of Medfly, or if a reproducing population of Medfly is detected at a place of production and the infestation has not yet been eradicated, avocados from that place of production would only be allowed to be exported to the United States if they are treated in accordance with 7 CFR part 305. (We are proposing to approve five treatments for Medfly in avocados from Peru. This is discussed in further detail later in this document under the heading ''Addition of Treatments for Medfly in Avocados from Peru.'')

Surveys for the Avocado Seed Moth

Paragraph (f) of proposed § 319.56–49 would require surveys to demonstrate that registered places of production are free of the avocado seed moth. Specifically, Peruvian departamentos [2] in which avocados are grown for export to the United States would have to be surveyed by the NPPO of Peru at least once annually, no more than 2 months before harvest begins, and found to be free from infestation by the avocado seed moth. An annual survey is appropriate for the avocado seed moth because the pest has limited mobility; the results of a survey conducted no more than 2 months before harvest would indicate freedom from the avocado seed moth for the entire harvest period. APHIS would have to approve the survey protocol used to determine and maintain pest-free status and the actions to be performed if the avocado seed moth is detected.

Surveys would have to include representative areas from all parts of each registered place of production in each departamento. The NPPO of Peru would have to cut and inspect a biometric sample of fruit at a rate determined by APHIS. We expect that the biometric sample would include about 300 fruit from each place of production. Fruit sampled would have to be either from the upper half of the tree or from the ground. Sampled fruit would have to be cut and examined for the presence of eggs and larvae of the avocado seed moth in the pulp or seed and for the presence of eggs in the pedicel.

If one or more avocado seed moths is detected in the annual survey, the affected place of production would be immediately suspended from the export program until appropriate measures to reestablish pest freedom, agreed upon by the NPPO of Peru and APHIS, have been taken. These measures could include further delimiting surveys, appropriate pesticide treatments, or removal of infested host material. The NPPO of Peru would have to keep records of the avocado seed moth detections for each orchard, update the records each time the orchards are surveyed, and make the records available to APHIS inspectors upon request. The records would have to be maintained for at least 1 year after the beginning of the harvest, in order to ensure that the records of the previous year's survey are available when conducting a survey.

Harvesting Requirements

Paragraph (g) of proposed § 319.56–49 sets out requirements for harvesting. Harvested avocados would have to be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown would have to remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. These requirements would ensure that APHIS and the NPPO of Peru could identify the place of production where the avocados were produced if inspectors find quarantine pests in the fruit either before export or at the port of entry.

We would require the fruit to be moved to a registered packinghouse within 3 hours of harvest or to be protected from fruit fly infestation until moved. (Because of its low mobility, the avocado seed moth is not expected to infest picked avocados in places of production that have been surveyed and found to be free of that pest.) The fruit would have to be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. These requirements would prevent the fruit from being infested by fruit flies between harvest and packing.

Packinghouse Requirements

We are proposing several requirements for fruit origin and packinghouse activities, which would be contained in paragraph (h) of proposed § 319.56–49.

Paragraph (h)(1) would require registered packinghouses to accept only avocados that are from registered places of production and that are produced in accordance with the requirements of the systems approach during the time they are in use for packing avocados for export to the United States.

Paragraph (h)(2) would require avocados to be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse would have to be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. Screening with openings of not more than 1.6 mm excludes fruit flies. The packinghouse would have to have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed. These proposed requirements are designed to exclude fruit flies from the packinghouse.

Paragraph (h)(3) would require all avocados to be cleaned of all plant debris before packing. This procedure would ensure that the fruit alone is exported to the United States; other parts of the avocado tree may harbor pests other than the quarantine pests identified earlier. As noted earlier, the cleaning process also helps to remove *C. viridis* and *F. malvastra.*

Paragraph (h)(4) would require fruit to be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States, to prevent fruit fly infestation after the fruit is packed. These safeguards would have to remain intact until arrival in the United States.

Paragraph (h)(5) would require shipping documents accompanying consignments of avocados from Peru that are exported to the United States to include the official registration number of the place of production at which the avocados were grown and to identify the packing shed or sheds in which the fruit was processed and packed. This identification would have to be maintained until the fruit is released for entry into the United States. These requirements would ensure that APHIS and the NPPO of Peru could identify the packinghouse at which the fruit was packed if inspectors find quarantine pests in the fruit either before export or at the port of entry.

Inspection by the NPPO of Peru

To ensure that the mitigations required in the systems approach are effective at producing fruit free of the targeted quarantine pests, paragraph (i) of proposed § 319.56–49 would require inspectors from the NPPO of Peru to inspect a biometric sample from each place of production at a rate to be

[2] In Peru, the departamento is the first level of political subdivision within the country, similar to the U.S. State. However, because Peru is about five-sixths of the size of Alaska and there are 25 departamentos, a typical departamento is smaller than most States.

determined by APHIS. The inspectors would have to visually inspect fruit from each place of production for all the quarantine pests. The inspectors would also have to cut fruit to inspect for the avocado seed moth and to inspect for *A. fraterculus*, *A. striata*, and Medfly if the avocados did not originate from an area free of those fruit flies.

C. viridis and *F. malvastra* are both external pests that can be detected by inspection. We commonly use phytosanitary inspection, along with requiring the use of commercial production practices, to mitigate the risk associated with *C. viridis* and with mealybug pests. Inspection of cut fruit for *A. fraterculus*, *A. striata*, Medfly, and the avocado seed moth is effective at detecting these internal feeders. We have cut fruit to detect fruit flies in programs such as the program for the importation of clementines from Spain; such cutting is required in the regulations at § 319.56–34(f). Similarly, the regulations governing the importation of Hass avocados from Mexico in § 319.56–30(c)(3)(iv) require fruit cutting to detect avocado pests including fruit flies and the avocado seed moth. We have determined that inspection can serve as an effective mitigation for the risk associated with these pests in avocados exported from Peru as well.

If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown would immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented.

If Medfly is detected, avocados from the place of production where the infested avocados were produced would be allowed to be imported into the United States only if treated with an approved treatment for Medfly in accordance with 7 CFR part 305.

Phytosanitary Certificate

To certify that the Hass avocados from Peru have been grown and packed in accordance with the requirements of proposed § 319.56–49, proposed paragraph (j) would require each consignment of Hass avocados imported from Peru into the United States to be accompanied by a phytosanitary certificate issued by the NPPO of Peru with an additional declaration stating that the avocados in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of proposed § 319.56–49. In addition:

- If the avocados were produced in an area free of *A. fraterculus* and *A. striata*, the phytosanitary certificate would have to state that the avocados in the consignment were produced in an area designated as free of *A. fraterculus* and *A. striata* in accordance with 7 CFR 319.56–5.
- If the avocados were produced in an area free of Medfly, the phytosanitary certificate would have to state that the avocados in the consignment were produced in an area designated as free of Medfly in accordance with 7 CFR 319.56–5.
- If the avocados were treated for Medfly prior to export, the phytosanitary certificate would have to state that the avocados in the consignment were treated for Medfly in accordance with 7 CFR part 305.

Addition of Treatments for Medfly in Avocados From Peru

The regulations in 7 CFR part 305 set out standards and schedules for treatments required in 7 CFR parts 301, 318, and 319 to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States through the importation or movement of fruits, vegetables, and other articles. Section 305.2 lists approved treatments; paragraph (h)(2)(i) lists approved treatments for imported fruits and vegetables, and paragraph (h)(2)(ii) lists approved treatments for fruits and vegetables moved interstate.

Five treatments are currently listed as approved treatments for Medfly in avocados:

- Methyl bromide fumigation treatment schedule MB T101–c–1, approved for treating Medfly in avocados imported from Israel and from the Philippines;
- Methyl bromide fumigation followed by cold treatment schedules MB&CT T108–a–1, MB&CT T108–a–2, and MB&CT T108–a–3, approved for treating Medfly in avocados imported from Chile and avocados moved interstate from areas quarantined for Medfly;
- Cold treatment schedule T107–a, approved for avocados moved interstate from areas quarantined for Medfly.

Because there are no differences between the avocados grown in Peru and the avocados grown in the United States or the other countries listed above that would affect the efficacy of the treatments, we have determined that these treatments would be effective for treating Medfly in avocados imported from Peru as well. Therefore, we are proposing to list MB T101–c–1, MB&CT T108–a–1, MB&CT T108–a–2, MB&CT T108–a–3, and CT T107–a as approved treatments for Medfly in avocados from Peru in paragraph (h)(2)(i) of § 305.2.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the economic effects of this proposed rule on small entities. Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The NPPO of Peru has requested that APHIS authorize market access for commercial shipments of fresh Hass avocados into the continental United States for domestic consumption. APHIS is proposing to grant this request if Peru produces the Hass avocados in accordance with a systems approach that would include registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas or trapping for fruit flies; surveys for the avocado seed moth; and inspection for quarantine pests by Peru's NPPO. Hass avocados from Peru would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the avocados have been inspected for quarantine pests and were grown and packed in accordance with the proposed requirements. These mitigations would allow for the importation of Hass avocados from Peru into the United States while providing protection against the introduction of quarantine pests. Application of the mitigation measures in granting Peru's request is consistent with World Trade Organization agreements that sanitary and phytosanitary regulatory restrictions should be based on scientific evidence and applied only to the extent necessary to protect human, animal, and plant health.

This analysis focuses on the potential economic impacts of allowing fresh Hass avocado imports from Peru. Expected benefits and costs are examined in accordance with Executive Order 12866. Expected economic impacts for small entities are also evaluated, as required by the Regulatory Flexibility Act. Our analysis indicates that, while producer revenues would be negatively affected, the benefits of the proposed rule would exceed costs overall. The study considers expected price and welfare changes due to projected annual imports of 19,000 metric tons of fresh Hass avocados from Peru.

The United States is the world's leading importer of all fresh Hass avocados, with imports between 60 and 75 percent of total world exports annually. Japan and Canada rank a distant second and third with combined imports of 18 to 20 percent annually. The United States imports primarily from Mexico and Chile. Mexico and Chile account for approximately 50 and 30 percent, respectively.[3] The United States exports less than 1.5 percent of its production; whereas U.S. consumption is more than double production. California is the largest U.S. producer of avocados, accounting for approximately 86 percent of all production and nearly all Hass avocado production. Peru has emerged as a major exporter of Hass avocados on the world market in recent years, accounting for approximately 18 percent of world exports. In Peru, the Hass avocado harvesting season occurs between May and September; whereas the California avocado marketing season is perennial.

Analytical Approach, the Baseline, and Modeling Assumptions

In this section, we describe the economic model used to compute expected impacts of the proposed rule on producers and consumers of fresh Hass avocados, as well as the assumptions of the analysis, including the baseline price and quantities, projected imports from Peru, the price elasticities of demand and supply, and possible levels of displacement of fresh Hass avocado imports from other countries by projected imports from Peru.

The Baseline Analysis System (BAS) Model

The Baseline Analysis System (BAS) model is a non-spatial partial equilibrium welfare model.[4] The BAS model can be applied to evaluate how market prices and quantities adjust to changes in policy, and how producers and consumers are thereby affected by implementation of the policy changes.

Our analysis is non-spatial in that the price and quantity effects obtained from the model are assumed to be average effects across geographically separated markets. Partial equilibrium means that the model results are based on maintaining a supply-and-demand equilibrium in a limited portion of an overall economy. Economic sectors not explicitly included in the model are assumed to have a negligible influence on the model results. A partial equilibrium analysis is appropriate because the proposed rule is specific to the U.S. fresh Hass avocado market, and is therefore expected to have only limited effects on other sectors of the economy. Avocados are not close substitutes for other fruits.

Expected effects of the proposed rule are described in terms of welfare impacts, as reflected in calculated changes in consumer and producer surplus. Consumer surplus is the difference between what the consumer pays for a unit of a good or service and the maximum price that the consumer would be willing to pay for that unit. Producer surplus is the difference between the price a producer is paid for supplying a unit of a good or service and the minimum price that the producer would be willing to accept to supply that unit.

The consumer and producer surplus equations in the model are based on the assumption that demand and supply functions are approximately linear near the initial equilibrium point. For small shifts, this assumption results in reasonably accurate measures of consumer and producer surplus changes. Parallel shifts in the demand and supply functions are assumed. In addition to domestic demand and supply functions, an import supply function is included in the model to account for assumed changes in imports.

Baseline for Fresh Hass Avocados

The model's baseline represents the current U.S. fresh Hass avocado market, in terms of production, consumption, import, and export quantities; price; and own-price elasticities of demand and supply. Price elasticities describe the responsiveness of sellers and buyers to price changes. Table 1 reports the baseline data used in calculating the welfare impacts of importing fresh Hass avocados from Peru. Baseline quantities are 5-year averages, for the seasons 2002–03 through 2006–07, of U.S. fresh Hass avocado production, consumption, imports, and exports. The baseline price is the average import price for fresh Hass avocados on the domestic market over the same 5-year period, inflated to 2008 dollars using the gross domestic product deflator. Domestic demand for fresh Hass avocados is equivalent to consumption, or production plus imports minus exports. Domestic supply is measured as production minus exports.

TABLE 1—U.S. BASELINE DATA FOR FRESH HASS AVOCADO

[2002–03 through 2006–07 averages, metric tons]

Production[1]	174,869
Imports[2]	202,512
Exports[2]	2,616
Consumption[3]	374,766
Price per metric ton[2]	$1,410

[1] *Source:* California Avocado Commission (CAC) Annual Report 2006–07.
[2] *Source:* World Trade Atlas data.
[3] Calculated as production plus imports minus exports.

For this analysis, we use short-run and long-run supply elasticities for Hass avocados of 0.15 and 1.50, respectively, and a demand elasticity of −1.20. These elasticities are taken from Hoddle, *et al.* (2003). This study utilized data from Carman and Craft (1998) and techniques developed by Armington (1969) to obtain the own-price elasticity of demand. The more elastic supply in the longer run reflects producers' greater ability to adjust to changes in price over longer periods of time.

The Peru Avocado Growers Association estimates that 19,000 metric tons of fresh Hass avocados would be exported annually to the United States. It is likely that, given domestic demand constraints, a percentage of fresh Hass avocado imports from other sources would be displaced by these shipments. For the short- and long-term sets of

[3] Global Trade Atlas data.

[4] A complete description of the model is provided in: Forsythe, K.W., ''An Economic Model for Routine Analysis of the Welfare Effects of Regulatory Changes.'' V3.00. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Centers for Epidemiology and Animal Health. April 20, 2005 (draft). *http://www.aphis.usda.gov/peer_review/content/printable_version/bas_model_econOnly_apr20.pdf.*

The BAS economic model is based on methodology described in the following studies: Ebel, E.D., R.H. Hornbaker, and C.H. Nelson, ''Welfare Effects of the National Pseudorabies Eradication Program.'' *Amer. J. Agr. Econ.* 74(August 1992):638–45; Forsythe, K.W., and B.A. Corso, ''Welfare Effects of the National Pseudorabies Eradication Program: Comment.'' *Amer. J. Agr. Econ.* 76(November 1994):968–71; and Lichtenberg, E., D.D. Parker, and D. Zilberman, ''Marginal Analysis of Welfare Cost of Environmental Policies: The Case of Pesticide Regulation.'' *Amer. J. Agr. Econ.* 70(November 1988):867–74.

demand and supply elasticities, we model the welfare impacts assuming three different levels of displacement of fresh Hass avocado imports from other sources: No displacement, 11 percent of imports from Peru would displace imports from elsewhere, and 24 percent of imports from Peru would displace imports from elsewhere.

The 11 and 24 percent displacement levels are derived from the projected level of imports from Peru (19,000 metric tons), excess supply and demand elasticities for the United States (the same as those estimated by Hoddle, *et al.*), and market-clearing conditions of trade that include the excess supply of Hass avocados from Peru.[5]

As a measure of the sensitivity of the price and welfare effects to the projected level of imports from Peru, we calculate impacts assuming import levels would be 50 percent less or 50 percent greater (i.e., 9,500 metric tons or 28,500 metric tons of fresh Hass avocados imported yearly from Peru) than the projected 19,000 metric tons. Table 2 reports the net increases in U.S. Hass avocado imports for the three displacement scenarios and the three modeled levels of imports from Peru.

TABLE 2—NET INCREASE IN U.S. HASS AVOCADO IMPORTS, BASED ON PROJECTED IMPORT LEVELS OF FRESH HASS AVOCADOS FROM PERU AND DISPLACEMENT SCENARIOS

Percentage of imports from Peru assumed to displace other imports	Net increase in U.S. avocado imports		
	50 percent less than projected imports	Projected imports	50 percent more than projected imports
	MT		
0	9,500	19,000	28,500
11	8,455	16,910	25,365
24	7,220	14,400	21,660

Expected Costs and Benefits

In this section we report the results of the quantitative analysis. Price impacts and welfare effects for domestic producers and consumers of fresh Hass avocados are presented. We evaluate the sensitivity of the results to fresh avocado import levels different from those projected by comparing the effects of importing 50 percent more or 50 percent less from Peru than the projected 19,000 metric tons.

Model Results

Based on data averaged over 5 seasons, price changes and welfare effects of the proposed rule are summarized in tables 3 through 5 for projected fresh avocado imports from Peru of 19,000 metric tons annually, at 0, 3, and 7 percent discount rates for each set of elasticities. As expected, the price decline is largest when there is zero displacement, and demand and supply are more inelastic.

With a supply elasticity of 0.15 and a demand elasticity of −1.20, the price is calculated to decline by 4 percent when 19,000 metric tons of fresh Hass avocados are imported annually from Peru and there is no displacement of other imports. Undiscounted producer welfare losses under this set of elasticities and zero displacement total about $9.7 million, with consumer welfare gains of approximately $21.6 million and a net welfare gain of nearly $12 million.

When we assume that 24 percent of imports from Peru would displace imports from other sources, the same elasticities of demand and supply generate a price decline of 3.04 percent, undiscounted producer welfare losses of approximately $7.4 million, consumer welfare gains of $16.3 million, and a net welfare gain of $8.9 million. We expect the displacement percentage to lie between zero and 24 percent. The impacts for producers and consumers are also calculated assuming 3 and 7 percent rates of discount. Since the welfare effects are discounted only 1 year, from 2009, the presumed year of implementation, to the base year of 2008, the values when discounted at 3 and 7 percent are very similar to the undiscounted values. As expected, the net changes in welfare show small declines with increases in the discount rate.

In the more intermediate run, when the responsiveness of consumers is not as inelastic, price decline is smaller. Given a supply elasticity of 1.50 and a demand elasticity of −1.20, the price is calculated to decline by 2.7 percent with 19,000 metric tons of fresh Hass avocados imported annually from Peru. Undiscounted producer welfare losses under this scenario total about $6.4 million, with consumer welfare gains of approximately $14 million for a net welfare gain of about $8 million. Assuming 24 percent displacement and the same elasticities of demand and supply, the price is calculated to decline by about 2 percent with undiscounted producer welfare losses of nearly $4.9 million, consumer welfare gains of $10.9 million, and net welfare gains of $6 million.

The higher the level of displacement of imports from other countries, the smaller the price change and the smaller the welfare losses for producers and welfare gains for consumers. The extent to which displacement occurs is a critical factor affecting the size of potential impacts of the rule. Also, welfare gains for consumers and welfare losses for producers can be expected to be larger in the short run where supply is inelastic. Regardless of the percentage of displacement, the rate of discount, or the price elasticity of demand and supply, the benefits of the proposed rule to allow a projected 19,000 metric tons of fresh Hass avocados to be imported into the United States from Peru would exceed the costs in the long run.

[5] Displacement is calculated as a function of the excess supply of avocados from Peru and the excess demand for avocados by the United States, where displacement is equal to $1-\varepsilon \div (\eta-\varepsilon)$, ε represents the excess supply elasticity and η represents the excess demand elasticity. This representation is derived from the trading relationship by taking the logarithmic differential of the excess supply equation and solving for the logarithmic change in excess supply. Trade creation is expressed as the change in excess supply divided by the change in Peruvian avocado imports. Trade displacement is the remaining portion of Peruvian imports and is calculated as one minus trade creation.

TABLE 3—ONE-YEAR PRICE AND WELFARE EFFECTS FOR PROJECTED ANNUAL IMPORTS OF 19,000 METRIC TONS OF FRESH HASS AVOCADOS FROM PERU, DISCOUNTED AT 0 PERCENT

Demand and supply elasticities	Percentage of imports from Peru that displace other imports	Price change (percent)	Change in consumer welfare	Change in producer welfare	Net welfare change
			$1,000		
D −1.20, S 0.15	0	−4.00	21,618	−9,675	11,944
D −1.20, S 0.15	11	−3.56	19,191	−8,613	10,577
D −1.20, S 0.15	24	−3.04	16,337	−7,358	8,979
D −1.20, S 1.50	0	−2.68	14,407	−6,386	8,021
D −1.20, S 1.50	11	−2.39	12,800	−5,696	7,104
D −1.20, S 1.50	24	−2.04	10,908	−4,877	6,031

TABLE 4—ONE-YEAR PRICE AND WELFARE EFFECTS FOR PROJECTED ANNUAL IMPORTS OF 19,000 METRIC TONS OF FRESH HASS AVOCADOS FROM PERU, DISCOUNTED AT 3 PERCENT

Demand and supply elasticities	Percentage of imports from Peru that displace other imports	Price change (percent)	Change in consumer welfare	Change in producer welfare	Net welfare change
			$1,000		
D −1.20, S 0.15	0	−4.00	20,988	−9,393	11,596
D −1.20, S 0.15	11	−3.56	18,632	−8,362	10,269
D −1.20, S 0.15	24	−3.04	15,862	−7,144	8,718
D −1.20, S 1.50	0	−2.68	13,987	−6,200	7,787
D −1.20, S 1.50	11	−2.39	12,427	−5,530	6,897
D −1.20, S 1.50	24	−2.04	10,590	−4,735	5,855

TABLE 5—ONE-YEAR PRICE AND WELFARE EFFECTS FOR PROJECTED ANNUAL IMPORTS OF 19,000 METRIC TONS OF FRESH HASS AVOCADOS FROM PERU, DISCOUNTED AT 7 PERCENT

Demand and supply elasticities	Percentage of imports from Peru that displace other imports	Price change (percent)	Change in consumer welfare	Change in producer welfare	Net welfare change
			$1,000		
D −1.20, S 0.15	0	−4.00	20,204	−9,042	11,162
D −1.20, S 0.15	11	−3.56	17,935	−8,050	9,885
D −1.20, S 0.15	24	−3.04	15,269	−6,877	8,392
D −1.20, S 1.50	0	−2.68	13,465	−5,968	7,497
D −1.20, S 1.50	11	−2.39	11,963	−5,324	6,639
D −1.20, S 1.50	24	−2.04	10,194	−4,558	5,636

As indicated, in addition to considering the effects of three possible levels of displacement of fresh avocado imports from other sources, we analyzed the sensitivity of the results to changes in the projected quantity of fresh Hass avocados imported from Peru. We calculated the price and welfare effects assuming the possibility that avocado imports from Peru are 50 percent less or 50 percent greater than the 19,000 metric tons projected by Peruvian exporters.

Fresh avocado imports from Peru of 19,000 metric tons (and zero displacement of fresh avocado imports from other countries) would increase U.S. annual imports by approximately 9 percent, given the 5-year average of approximately 202,512 metric tons for the seasons 2002–03 through 2006–07. Imports of Hass avocados from Peru that are 50 percent more than is projected would increase the import supply by as much as 14 percent, whereas imports of Hass avocados from Peru that are 50 percent less than is projected by Peruvian exporters would increase the import supply not quite 5 percent. The results of the sensitivity analysis, as reported in table 6, assume that the annual quantity imported is 50 percent less (9,500 metric tons) or 50 percent more (28,500 metric tons) than the projected level of imports for the two pairs of demand and supply elasticities, three displacement scenarios, and applying a 3 percent rate of discount. The ranges for the changes in price and for the welfare effects are calculated for each of the three displacement levels. Again, the change in price is greatest when there is zero displacement in the short run where supply is more inelastic than the long run.

TABLE 6—SENSITIVITY ANALYSIS FOR PROJECTED U.S. IMPORTS OF FRESH HASS AVOCADOS FROM PERU

Demand and supply elasticities	Percentage of imports from Peru that displace other imports	Price change (percent)	Change in consumer welfare	Change in producer welfare	Net welfare change
			Million Dollars		
D −1.20, S 0.15	0	−2.0 to −6.0	10.7 to 31.8	−4.7 to −14.1	5.7 to 17.8
D −1.20, S 0.15	11	−1.8 to −5.3	9.2 to 28.2	−4.2 to −12.5	5.0 to 15.7
D −1.20, S 0.15	24	−1.5 to −4.6	7.9 to 24.0	−3.6 to −10.7	4.3 to 13.3
D −1.20, S 1.50	0	−1.3 to −4.0	6.9 to 21.1	−3.1 to −9.2	3.8 to 11.9
D −1.20, S 1.50	11	−1.2 to −3.6	6.2 to 18.7	−2.8 to −8.2	3.4 to 10.6
D −1.20, S 1.50	24	−1.0 to −3.1	5.3 to 16.0	−2.4 to −7.0	2.9 to 8.9

Note: Net welfare gains may not sum due to rounding. Only the welfare effects when discounted at 3 percent are presented, since the results are much the same when discount rates of 0 and 7 percent are used.

The price of fresh Hass avocados is calculated to decline by 6 percent if 28,500 metric tons of fresh Hass avocados were imported annually from Peru, there was no displacement of imports from other countries, and the demand and supply elasticities were −1.20 and 0.15; assuming an import level of 9,500 metric tons, no displacement, and the same elasticities yields a decrease in price of 2 percent.[6] Without displacement, prices were estimated to fall between 1.3 and 4 percent as producers adjust to market changes.

When we assume 24 percent displacement, given the same elasticities of demand and supply, price is calculated to decline between 1.5 percent (imports 50 percent less than projected) and 4.6 percent (imports 50 percent more than projected), with producer welfare losses ranging from $3.6 million to $10.7 million, consumer welfare gains from $7.9 million to $24 million, and net welfare gains from $4.3 million to $13.3 million.

In the long run, as implied by a supply elasticity of 1.50 and a demand elasticity of −1.20, the price is calculated to decline between 1 percent (imports 50 percent less than projected) and 3 percent (imports 50 percent more than projected), assuming 24 percent displacement of imports from other countries. Producer welfare losses under this scenario range from $2.4 million to $7 million, with consumer welfare gains ranging from $5.3 million to $16 million, for a net welfare gain of between $2.9 million and $8.9 million.

Given the linearity of the BAS model, changes in welfare are proportional to the assumed levels of imports from Peru. The largest annual net welfare gains reported in the sensitivity analysis are $17.8 million, with producer welfare losses of $14.1 million and consumer welfare gains of $31.9 million. These welfare impacts are based on fresh avocado imports from Peru totaling 28,500 metric tons and the unlikely possibility that none of these imports would displace fresh avocado imports from other countries. More reasonably, some portion of the imports from Peru would displace existing imports from foreign sources, and price and welfare effects of the rule for U.S. entities would be thereby moderated.

Benefit and Cost Conclusion

According to the Peru Avocado Growers Association, exporters expect to ship approximately 19,000 metric tons of fresh Hass avocados per year from Peru to the United States if the proposed rule is finalized. The projected imports would be roughly 5 percent of U.S. fresh avocado consumption and 11 percent of U.S. fresh avocado production. It is likely that at least a portion of the projected imports from Peru would displace imports from other foreign sources when fresh avocado supplies are low and demand is high. If no displacement were to occur, projected fresh avocado imports from Peru would represent an increase in fresh avocado imports of 9 percent. The extent to which displacement occurs is a critical factor affecting the size of potential impacts of the proposed rule.

In the analysis of expected price and welfare impacts, we examined effects of the projected level of fresh avocado imports from Peru if none, 11 percent, or 24 percent of the imports were to displace fresh avocado imports from other countries. We compared the price and welfare effects for two sets of demand and supply elasticities and quantified the welfare effects when not discounted as well as when they are discounted at 3 and 7 percent. The higher the level of displacement of imports from other countries, the smaller the price decline, and the smaller the welfare losses for producers and welfare gains for consumers.

In addition to considering the effects for three possible levels of displacement of fresh avocado imports from other sources, we analyzed the sensitivity of the results to different quantities of fresh Hass avocados imported from Peru. We calculated the price and welfare effects assuming the avocado imports to be 50 percent less or 50 percent greater than the 19,000 metric tons projected by Peru.

Given the linearity of the model used to assess welfare impacts, this sensitivity analysis yielded changes in welfare that are proportional to the assumed levels of imports. Reasonably, some portion of the imports from Peru would displace existing imports, and price and welfare effects of the rule for U.S. entities would be thereby moderated. The results of the sensitivity analysis indicate that consumers may be positively affected and U.S. producers may be negatively affected by a decline in market prices ranging between 1 percent and 6 percent, depending on the price elasticities of demand and supply and displacement ranging from 11 to 24 percent of fresh avocado imports from Peru. Net welfare gains for these same levels of displacement range from $2.9 million to $17.8 million, when discounted 3 percent. In all of the modeled scenarios, consumer gains resulting from the proposed rule are found to exceed U.S. producer losses. Nevertheless, producer prices are estimated to continue to decline in the long run, which may continue to

[6] The changes in welfare discussed in the remainder of this section have been computed using a discount rate of 3 percent.

negatively impact producer revenues. As producer receipts decline, so shall revenues for avocado handlers.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the expected impact of proposed rules on small entities. Sections 603(b) and 603(c) of the Act specify the content of an IRFA. In this section, we address these IRFA requirements for this proposed rule.

Reasons for Action

The national plant protection organization (NPPO) of Peru has requested that APHIS allow the importation of fresh Hass avocados into the United States for domestic consumption. The current fruits and vegetables regulations (7 CFR 319.56–1 through 319.56–48) do not authorize the importation of fresh Hass avocados from Peru. In response to this request, APHIS is proposing to allow the importation of commercial shipments of fresh Hass avocados from Peru under a systems approach to address the risks presented by various pests. The systems approach is described earlier in this document.

The proposed rule is consistent with World Trade Organization agreements that sanitary and phytosanitary regulatory restrictions should be based on scientific evidence and applied only to the extent necessary to protect human, animal, and plant health.

Objectives and Legal Basis for Rule

The objective of the proposed rule is to amend the regulations under ''Subpart—Fruits and Vegetables'' to allow the importation of commercial consignments of fresh Hass avocados from Peru under a combination of mitigation measures to address the risk of pest introduction.

The regulations in ''Subpart—Fruits and Vegetables'' (§§ 319.56–1 through 319.56–48) govern the importation of fruits and vegetables into the United States. Approved phytosanitary treatments are listed in § 305.2. The Plant Protection Act (7 U.S.C. 7701 *et seq.*, June 20, 2000) is the statutory basis for 7 CFR parts 305 and 319. It authorizes the Secretary of Agriculture to implement programs and policies designed to prevent the introduction and spread of plant pests and diseases.

Description and Estimated Number of Small Entities Regulated

The proposed rule may directly affect U.S. domestic producers of Hass avocados, as well as firms responsible for packing and shipping these commodities for domestic and foreign markets. We find that a substantial number of these businesses are small entities, according to Small Business Administration (SBA) guidelines and based on *2002 Census of Agriculture* data. SBA classifies producers within the category Other Non-Citrus Fruit Farming (NAICS 111339) having annual sales of not more than $750,000 as small entities. Nearly all U.S. production of Hass avocados takes place in California, where Hass is the dominant variety grown. According to the *2002 Census of Agriculture Summary and State Data* report, there were a total of 6,251 avocado farms in the United States in 2002, with California farms representing approximately 85 percent (or 4,801 farms) of this total.[7] Of the remaining farms, 839 are located in Florida, 601 are located in Hawaii, and 10 are located in Texas.

APHIS does not have information on the size distribution of the total U.S. avocado producers, but according to *2002 Census of Agriculture,* there were a total of 95,680 Fruit and Tree Nut farms (NAICS 1113) in the United States in 2002.[8] Of this number, nearly 99 percent had annual sales in 2002 of less than $500,000, which is well below the SBA's small-entity threshold of $750,000.[9] While cash receipts by size for avocado farms were not reported in the *2002 Census of Agriculture,* it is reasonable to assume that most of the 6,251 domestic avocado farms currently in operation qualify as small entities.

Avocado packing and shipping establishments, those engaged in postharvest crop activities (NAICS 115114), are also expected to be small according to SBA guidelines. The small-entity standard for packinghouses is $6.5 million or less in annual receipts. In 2004, the California Avocado Commission reported that 51 companies were active handlers of California avocados at the end of October 2003. Of this number, 18 companies had first sales of avocados of under $10,000; 8 companies had avocado sales of between $10,000 and $49,999; 5 companies had sales from $50,000 to $99,999; 5 companies had sales from $100,000 to $499,999; 2 companies had sales from $500,000 to $999,999; 2 companies had sales from $1 million to $4,999,999; 1 company had sales from $5 million to $9,999,999; 2 companies had sales from $10 million to $19,999,999; 6 companies had sales from $20 million to $49,999,999; and 2 companies sold over $50 million worth of California avocados. This information indicates that 40 of the 51 firms are small entities. We conclude that the majority of the handlers that would be affected by the rule are small entities.

We conclude that, while small producing entities will be affected by the proposed rule, the overall net changes in welfare of allowing the importation of fresh Hass avocados from Peru under the specified systems approach are likely to be positive.

Description and Estimate of Compliance Requirements

The proposed rule would include recordkeeping requirements, as described under the Paperwork Reduction Act section of this proposed rulemaking.

Duplication, Overlap, and Conflict With Existing Rules and Regulations

APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Regulatory Alternatives to the Proposed Rule

The NPPO of Peru requested that APHIS amend the regulations to allow the importation of avocados into the United States from Peru. As part of the request, Peru included for APHIS' evaluation an export protocol to address the pest risk of those pests that Peru considered as quarantine pests for the United States and that could follow the pathway on avocados imported into the United States. The protocol provided by Peru consisted of the production and packing requirements that are already in place for avocados exported from Peru to the European Union. In response to the request and as indicated above, APHIS prepared a PRA to evaluate the risks associated with the importation of Hass avocados from Peru. The PRA identified six pests of quarantine significance present in Peru that could be introduced into the United States through the importation of Hass avocados:

- *Anastrepha fraterculus* (Wiedemann), the South American fruit fly;
- *Anastrepha striata* Schiner, the guava fruit fly;

[7] National Agricultural Statistics Service (NASS), United States Department of Agriculture (USDA), ''United States: Summary and State Data, Volume 1,'' 2002 Census of Agriculture, issued June 2004.

[8] This number includes farms producing fruit and tree nut varieties and those specifically producing avocados.

[9] Source: SBA and *2002 Census of Agriculture.*

- *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly (Medfly);
- *Coccus viridis* (Green), the green scale;
- *Ferrisia malvastra* (McDaniel), a mealybug; and
- *Stenoma catenifer* Walsingham, the avocado seed moth.

During review of the export protocol provided by Peru, APHIS found that several pests identified in the PRA were not addressed by the measures included in the Peru NPPO protocol. As a result, APHIS determined that the export protocol provided by Peru would not be sufficient to address the risks associated with the importation of Hass avocados into the United States. Therefore, APHIS developed and is proposing an alternative systems approach to prevent the introduction of these quarantine pests into the United States.

There were several alternatives that APHIS considered other than the systems approach. For instance, APHIS considered only the protocol proposed by Peru. However, that protocol would not have mitigated the pest risk presented by all of the quarantine pests APHIS identified in the PRA. The systems approach that APHIS developed and is proposing includes practical and effective measures to mitigate the risk of the introduction of the quarantine pests identified in the PRA into the United States, and is the only acceptable alternative for the importation of Hass avocados from Peru.

Executive Order 12988

This proposed rule would allow Hass avocados to be imported into the continental United States from Peru. If this proposed rule is adopted, State and local laws and regulations regarding avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of Hass avocados from Peru, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2008–0126. Please send a copy of your comments to: (1) Docket No. APHIS–2008–0126, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the fruits and vegetables regulations to allow the importation of Hass avocados from Peru into the continental United States. As a condition of entry, Hass avocados from Peru would have to be produced in accordance with a systems approach that would include requirements for importation in commercial consignments; registration and monitoring of places of production and packinghouses; grove sanitation; pest-free areas or trapping for fruit flies; surveys for the avocado seed moth; and inspection for quarantine pests by the national plant protection organization of Peru. Implementation of this proposed rule would require the submission of documents such as phytosanitary certificates, trust fund agreements, workplans, records for recordkeeping, and registration and inspection forms.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6103 hours per response.

Respondents: Importers of Hass avocados and foreign officials.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 252.

Estimated annual number of responses: 503.

Estimated total annual burden on respondents: 307 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

Lists of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding in alphabetical order, under Peru, a new entry for avocado to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Peru			
*	*	*	*
	Avocado	*Ceratitis capitata*	MB T101–c–1, MB&CT T108–a–1, MB&CT T108–a–2, MB&CT T108–a–3, CT T107–a.
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–49 is added to read as follows:

§ 319.56–49 Hass avocados from Peru.

Fresh Hass variety avocados (*Persea americana* P. Mill.) may be imported into the continental United States from Peru only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha fraterculus* (Wiedemann), the South American fruit fly; *Anastrepha striata* Schiner, the guava fruit fly; *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly; *Coccus viridis* (Green), the green scale; *Ferrisia malvastra* (McDaniel), a mealybug; and *Stenoma catenifer* Walsingham, the avocado seed moth.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Peru must provide a workplan to APHIS that details the activities that the NPPO of Peru will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The NPPO of Peru must also establish a trust fund in accordance with § 319.56–6.

(2) The avocados must be grown at places of production that are registered with the NPPO of Peru and that meet the requirements of this section.

(3) The avocados must be packed for export to the United States in packinghouses that are registered with the NPPO of Peru and that meet the requirements of this section.

(4) Avocados from Peru may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of Peru must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (c) and (f) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. If trapping is conducted under paragraphs (d)(2) or (e)(2) of this section, the NPPO of Peru must also verify that the growers are complying with the requirements in those paragraphs and must certify that each place of production has effective fruit fly trapping programs. Any personnel conducting trapping and pest surveys under paragraphs (d), (e), and (f) of this section must be trained and supervised by the NPPO of Peru. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Peru must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (h) of this section.

(3) If the NPPO of Peru finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Peru conduct an investigation and appropriate remedial actions have been implemented.

(4) The NPPO of Peru must retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Mitigation measures for A. fraterculus and A. striata.* Places of production must meet one of the following requirements for *A. fraterculus* and *A. striata*:

(1) *Pest-free area.* The avocados must be produced in a place of production located in an area that is designated as free of *A. fraterculus* and *A. striata* in accordance with § 319.56–5.

(2) *Place of production with low pest prevalence.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the harvest, trapping

must be conducted in registered places of production with at least 1 trap per 0.2 square kilometers (km²) to demonstrate that the places of production have a low prevalence of *A. fraterculus* and *A. striata*. APHIS-approved traps baited with APHIS-approved plugs must be used and serviced at least once every 2 weeks.

(ii) During the trapping, when traps are serviced, if *A. fraterculus* and *A. striata* are trapped at a particular place of production at cumulative levels above 0.7 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export avocados to the United States. The NPPO of Peru must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

(e) *Mitigation measures for C. capitata.* Places of production must meet one of the following requirements for *C. capitata*:

(1) *Pest-free area.* The avocados must be produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5.

(2) *Pest-free place of production.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the harvest, trapping must be conducted in registered places of production to demonstrate that the places of production are free of *C. capitata*. There must be at least 2 traps per km² in commercial production areas. APHIS-approved traps baited with APHIS-approved plugs must be used and serviced at least once every 2 weeks.

(ii) During the trapping, when traps are serviced, if any *C. capitata* are found, 10 additional traps must be deployed in a 0.5-km² area immediately surrounding all traps where *C. capitata* was found to determine whether a reproducing population is established. If any additional *C. capitata* are found within 30 days of the first detection, the affected place of production will be ineligible to export avocados without treatment for *C. capitata* until the source of the infestation is identified and the infestation is eradicated. APHIS must concur with the determination that the infestation has been eradicated. The NPPO of Peru must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

(3) *Treatment.* If the avocados do not meet the conditions of paragraphs (e)(1) or (e)(2) of this section, or if a reproducing population of *C. capitata* is detected at a place of production and the infestation has not yet been eradicated, avocados from that place of production may only be exported to the United States if they are treated in accordance with part 305 of this chapter.

(f) *Surveys for S. catenifer.* (1) Peruvian departamentos in which avocados are grown for export to the United States must be surveyed by the NPPO of Peru at least once annually, no more than 2 months before harvest begins, and found to be free from infestation by *S. catenifer*. APHIS must approve the survey protocol used to determine and maintain pest-free status and the actions to be performed if *S. catenifer* is detected. Surveys must include representative areas from all parts of each registered place of production in each departamento. The NPPO of Peru must cut and inspect a biometric sample of fruit at a rate determined by APHIS. Fruit sampled must be either from the upper half of the tree or from the ground. Sampled fruit must be cut and examined for the presence of eggs and larvae of *S. catenifer* in the pulp or seed and for the presence of eggs in the pedicel.

(2) If one or more *S. catenifer* is detected in the annual survey, the affected place of production will be immediately suspended from the export program until appropriate measures to reestablish pest freedom, agreed upon by the NPPO of Peru and APHIS, have been taken. The NPPO of Peru must keep records of *S. catenifer* detections for each orchard, update the records each time the orchards are surveyed, and make the records available to APHIS inspectors upon request. The records must be maintained for at least 1 year after the beginning of the harvest.

(g) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly infestation until moved. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing.

(h) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States, the packinghouses may only accept avocados that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Avocados must be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Before packing, all avocados must be cleaned of all plant debris.

(4) Fruit must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(5) Shipping documents accompanying consignments of avocados from Peru that are exported to the United States must include the official registration number of the place of production at which the avocados were grown and must identify the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(i) *NPPO of Peru inspection.* Following any post-harvest processing, inspectors from the NPPO of Peru must inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for the quarantine pests listed in the introductory text of this section and must cut fruit to inspect for *S. catenifer*. Unless the avocados were produced in a pest-free area as described in paragraph (d)(1) of this section, the inspectors must cut fruit to inspect for *A. fraterculus* and *A. striata*. Unless the avocados were produced in a pest-free area as described in paragraph (e)(1) of this section, the inspectors must cut fruit to inspect for *C. capitata*. If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented. If *C. capitata* is detected, avocados from the place of production where the infested avocados were produced may be imported into the United States only if treated with an approved treatment for *C. capitata* in

accordance with part 305 of this chapter.

(j) *Phytosanitary certificate.* Each consignment of Hass avocados imported from Peru into the United States must be accompanied by a phytosanitary certificate issued by the NPPO of Peru with an additional declaration stating that the avocados in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of 7 CFR 319.56–48. In addition:

(1) If the avocados were produced in an area free of *A. fraterculus* and *A. striata*, the phytosanitary certificate must state that the avocados in this consignment were produced in an area designated as free of *A. fraterculus* and *A. striata* in accordance with 7 CFR 319.56–5.

(2) If the avocados were produced in an area free of *C. capitata*, the phytosanitary certificate must state that the avocados in this consignment were produced in an area designated as free of *C. capitata* in accordance with 7 CFR 319.56–5.

(3) If the avocados have been treated for *C. capitata* prior to export, the phytosanitary certificate must state that the avocados in the consignment have been treated for *C. capitata* in accordance with 7 CFR part 305.

Done in Washington, DC, this 31st day of December 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–31474 Filed 1–6–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1365; Directorate Identifier 2008–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: In 2005 a lateral runway excursion occurred on an A320 aircraft. Such excursions are classified as hazardous, with a large reduction in safety margins. Investigation has shown that the aircraft landed with the nose wheels rotated nearly 20 degrees from center. During subsequent tests on the removed BSCU [Braking and Steering Control Unit], a BSCU hardware failure was found, affecting the monitoring function, including the system reconfiguration management, and leading to a runaway of [the] Nose Wheel Steering [uncommanded steering]. An uncommanded steering condition during takeoff or landing could result in departure of the airplane from the runway. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 6, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1365; Directorate Identifier 2008–NM–076–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0048, dated February 28, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> In 2005 a lateral runway excursion occurred on an A320 aircraft. Such excursions are classified as hazardous, with a large reduction in safety margins. Investigation has shown that the aircraft landed with the nose wheels rotated nearly 20 degrees from center. During subsequent tests on the removed BSCU [Braking and Steering Control Unit], a BSCU hardware failure was found, affecting the monitoring function, including the system reconfiguration management, and leading to a runaway of [the] Nose Wheel Steering [uncommanded steering].
>
> DGAC [Direction Générale de l'Aviation Civile] Airworthiness Directive (AD) F–1992–117–025(B), Revision 1 [which corresponds to FAA AD 94–24–07], mandated the BSCU upgrade in order to improve the steering logic, but this modification has shown not to be sufficient to address the identified failure mechanism.
>
> A software modification is now implemented in BSCU standard 10 which improves the system reconfiguration management when this failure mechanism is detected.
>
> BSCU standard 10 also includes other improvements—as detailed in the associated Service Bulletin.
>
> This AD therefore mandates the modification or replacement of the BSCU standard 7, 9 or 9.1, by the BSCU standard 10.

This AD also requires replacement of certain DUNLOP tires that are not compatible with BSCU standard 10. An uncommanded steering condition